make your fine to the people of the state of one thousand dollars; and it is further considered that you stand committed until the fine and costs are paid. It is further ordered that the clerk of this court receive and receipt for this fine for the benefit of the treasury of the state.

Had the writ of mandamus reached you while the books were in your possession, and had it been made known to this court that you had refused to extend the tax upon them, we should not have hesitated to inflict upon you the severest penalty. As it is, we are satisfied we could do no less than we have done in vindication of the law.

The duty this court has been called upon to perform has been by no means a pleasant duty. We have endeavored so to discharge it that whilst asserting the supremacy of the law, we have not causelessly invaded any individual right.

Court of Common Pleas of New York.

MACLIN *v.* NEW JERSEY STEAMBOAT COMPANY.

A common carrier may make reasonable regulations as to the place where the baggage of a passenger shall be deposited, and if actual notice of the regulation is given to him, or it be shown that the regulation had become, by general usage, so notorious and universal that he must be presumed to have known it, the passenger violating it cannot recover for loss of his baggage.

Posting a printed copy of the regulation in carrier's conveyance or office, does not amount to notice to the passenger. He is under no legal obligation to read such notices.

A passenger on a steamboat who carries his valise with him to his state-room, does not thereby undertake the exclusive care of it, so as to release the carrier from all liability in regard to it.

The placing of his valise in his state-room by a passenger who has paid his fare and received the key of the room, is a sufficient delivery to the carrier to charge him for negligence.

A regulation that would prevent a passenger, who was to spend the night on a boat, from taking to his state-room the baggage necessary for his toilet and for his daily use, would not be reasonable or valid.

This action was brought to recover of defendants, owners of a line of steamboats running between New York and Albany, the value of a quantity of baggage, consisting of articles of wearing apparel lost on board of one of defendants' vessels.

On the trial it was claimed by defendants that they were exonerated from all liability for loss, on the ground that the baggage was deposited by the passenger in his state-room, and not delivered to the custody of the defendants or their agents; that notices were posted throughout the vessel prohibiting passengers leaving their baggage in their state-rooms, and that it must be presumed that the passenger in this case saw such notices and had knowledge of this regulation. The passenger admitted not having delivered his baggage to the defendants or their agents, but denied any knowledge of such regulation. The defendants' counsel requested the court to charge, that in order to make defendants liable, the baggage should have been committed to the care and custody of defendants; that a carrier may require portion of baggage, not necessary for daily use, to be deposited in a suitable place, as a baggage-room; that defendants were not liable for wearing apparel in present use and in the custody of a passenger; that if common care and attention on the passenger's part would have prevented loss, he cannot recover; that it would be negligence if the passenger did not make use of the facilities placed by defendants at his disposal for protection of his property; that defendants did all in their power to protect the passenger's property; that to render defendants liable, there must either be a special acceptance of a passenger's baggage by them, or a delivery to them according to the established usage of business. The court refused to charge as requested. Exception was taken by defendants to the portion of the judge's charge, wherein the court charged that with reference to contract of passage between the passenger and defendants, there was no obligation, on passenger's part, to read any notice limiting defendants' liability, but that if such notice was brought home to him in any way, it bore upon the question of negligence only, and that if the jury believed that the passenger was guilty of negligence in not reading the notice, and in taking his baggage in his state-room with knowledge of such regulation, then that he could not recover. A verdict was rendered for plaintiff, from which defendants appealed.

Prentice for appellant.

Maclin for appellee.

The opinion of the court was delivered by

DALY, First Judge.—A carrier of passengers has the right to establish any reasonable regulation which he considers necessary to secure the safety of the baggage of his passengers, and if the passenger knows of the regulation, and his baggage is lost through his neglect or refusal to comply with it, the carrier is not answerable: *Jencks* v. *Coleman*, 2 Sumner, 221; *Hall* v. *Power*, 12 Met., 482; *Ball* v. *N. J. Steamboat Co.*, 1 Daly, 491; *Mudget* v. *Bay State Steamboat Company*, Id., 158; *Van Horn* v. *Kermit*, 4 E. D. Smith, 453; Angel on Carriers, §§ 530, 530 a, 530 b. This has been, from the time of Coke, held to be the law in respect to the liability of innkeepers for reasons that are equally applicable to the carriers of passengers: *Calye's case*, 8 Coke R., 33; *Wilson* v. *Halpin*, 1 Daly, 496; *Sanders* v. *Spencer*, Dyer R., 266, b; *Van Wyck* v. *Howard*, 12 How. P. R., 147; *Burgess* v. *Clement*, 4 M. & Selw., 306; *Richmond* v. *Smith*, 8 B. & C., 9. But to impose that responsibility upon the passenger, notice should be given to him of the regulation, or it should be shown expressly that he knew it, or that it had become, by general usage, so notorious and universal that he must or ought to have known it.

Where the proprietors of a steamboat have, as the defendants had in this instance, an express place for the keeping of baggage, known as the baggage-room, a regulation that passengers should not leave their baggage in their state-rooms, or only such baggage as might be required for their use during the passage, would not be an unreasonable one. The defendants' witnesses testified that a large printed notice, entitled "Rules and Regulations to be observed upon this Steamer," had been conspicuously posted up in different parts of the boat, and that a small copy of it had been put up in each state-room, in the most prominent part, beside the looking-glass, where the light would fall upon it. Among other regulations embodied in this instance was one in these words: "Baggage not allowed in cabins or state-rooms. This company will not be liable for baggage unless checked." Their witnesses also testified that there was but one general entrance to the state-room saloon. That at the foot of the stairs leading into the saloon, a man was placed,

whose duty it was to prevent passengers carrying valises up stairs; that at the head of the stairway there were servants in attendance to give notice to persons coming up with baggage, and that upon the day in question there was a man at the bottom of the stairs leading into the saloon, charged with the duty.

All this may have been done, and yet if the passenger, as he said, knew nothing of the regulation, the defendants were not released from their liability. He not only so testified, but that he carried his valise up stairs, and that there was no one at the bottom of the stairs who said anything to him about baggage, nor any person on board nor in the state-room. He further testified that there was no such notice as the defendants' witnesses testified to, in the state-room or any part of the vesssel. That he travelled every summer upon boats of this line, but not on that boat before, as that was her first season; that he had seen no such notice at any time upon the boat; that having studied law, he looked for this notice, because he thought that the company ought to have notified the passengers about their baggage and about taking care of it; that it was "simply intuition on his part." In addition to his testimony, a passenger, who was on the boat on that night, was called by plaintiff, and he testified that it was his impression that there was no such notice upon the boat; that he would not swear positively that there was not, but would swear positively that he had not seen it, and could not remember whether he had looked or not, but it was his impression that the passenger whose valise was lost called his attention to the fact that there was no such notice upon the steamboat. He also testified that he had frequently travelled upon the boat and taken baggage to his state-room, and that he had never been forbidden to do so by anybody, and that he had seen passengers with their baggage up stairs.

The question whether the passenger had or had not knowledge of this regulation was upon this evidence a question of fact, upon which the jury have found against the defendants. If the case rested simply upon the facts sworn to by the defendants' witnesses, they would probably have been sufficient to infer that the passenger must have been apprised of the regulation,

or rather to have warranted that presumption in the absence of any evidence to the contrary. But there was evidence directly to the contrary, and the question therefore was one which the jury alone could pass upon.

It remains, therefore, only to consider whether the judge erred in refusing to charge any of the propositions which were submitted to him, or erred in those portions of his charge to which exceptions were taken. The passenger had engaged a state-room several days before, and upon the day in question he went to the office upon the boat, got the key of his state-room and paid his fare. The contract for his passage was therefore complete, and the carriage and safe keeping of his baggage, was, on the part of the defendants, a duty incident to the contract. The taking of his valise with him into the state-room was not such a taking of it into his own exclusive custody and guardianship as to absolve the carrier from any duty, liability or obligation respecting it: *Mudget* v. *Bay State Steamboat Co.*, 1 Daly, 151; *Tower* v. *Utica, &c., R. R. Co.*, 7 Hill, 47; *Burgess* v. *Clement*, 4 M. & S., 306; *Robinson* v. *Dunmore*, 2 B. & P., 47; *Calye's case*, 8 Coke, R. 33; *Richards* v. *The London, &c., Railway Co.*, 7 Com. Bench, 859; Redfield on Carriers, § 73; Angel on Carriers, § 140, 143. Assuming this to be the law, it disposes of many of the requests to charge. It disposes of the first, for the passenger having paid his fare and taken his valise into the state-room, it was whilst there, in the language of the request, committed to the care and safe keeping of the defendants, if the passenger, as the jury must have found, knew nothing of the regulation.

This was substantially determined in *Calye's case*, 8 Coke, 33; and held to be settled from the time of the Year Books, 2 Hen. VI, 21; 11 Hen. IV, 45; 42 Ed. III, 11.

The defendants were not entitled to have the fourth request charged, as there was no evidence of any notice to the passenger, that the baggage not required for necessary daily use, should be deposited in a designated place; the printed notice being, that baggage was not allowed in the cabins or state-rooms, without any discrimination as to what might be necessary for daily use. The valise which the passenger placed

in the state-room contained nothing but wearing apparel for a week's journey and the articles which a traveller carried for daily use, a razor and strop, comb and brushes, etc., so, even if this had been the notice, I think the law would hold that the few things which the valise contained, for beyond the toilet articles named there was simply what would suffice for a change of apparel, came under the designation of articles for daily use.

What has been already said is a sufficient answer to the fifth request. In respect to the sixth there was no evidence of any negligence on the part of the passenger.

He placed the valise and his umbrella in the state-room and locked the door, and when he came back five minutes afterwards they were gone. They were probably stolen by some person who obtained access to the state-room by means of the window, or by opening the door with a duplicate key or pick. There was no foundation therefore for a proposition which implied the want of common care and attention on his part. It is no excuse says COKE in *Calye's case*, "for the innkeeper to say that he delivered the key of the chamber door to the guest in which he is lodged, and that he left the chamber door open, for he ought to keep the goods and chattels of his guest in safety, without any stealing or purloining," and if this was good law in respect to an inn, it is equally so in respect to the description of steamboats in which the traveller is carried, lodged and fed, which may, with some liberty of speech, be called a travelling inn.

The eighth request was without point or meaning, unless the facilities were named which the defendant had placed at passenger's disposal for the protection of his property. The judge did not know what facilities were meant nor do I. His attention therefore should have been drawn to the portion of the evidence upon which the defendants relied as a foundation for this proposition, for without this it was unintelligible.

The ninth request should not have been charged. Carriers of passengers are, as respects the carriage of the passenger's baggage, which is an accessory to the principal contract, held to the same responsibility as common carriers in general, and must answer for the loss of it, though it happened without their fault: *Hawkins* v. *Hoffman*, 6 Hill, 589.

As is the case therefore with common carriers, they are not allowed to show that they took all possible care of it—*Dale* v. *Hall*, 1 Wils. R. 281—but are insurers against everything but the act of God or public enemies. The tenth request that there must be a special acceptance of the property or a delivery according to the established usage in the carrier's business, is disposed of by the fact that the passenger paid his fare, received the key of the state-room and took his valise there with him, and in respect to the eleventh request the defendant had the full benefit of it in the judge's charge.

The first exception to the judge's charge is his statement to the jury that the passenger is under no obligation whatever, to read any notice that may be posted in a conspicuous place. It is well-settled that common carriers cannot affect or limit their responsibility by putting up notices: *Hollister* v. *Nowlen*, 19 Wend. 234; *Camden, &c., R. R.* v. *Belknap*, 21 Id., 354; *Clark* v. *Faxton*, Id. 153; *Power* v. *Myers*, 26 Id., 594; *Alexander* v. *Greene*, 2 Hill, 9; 7 Id., 533, and this being the case, it is not obligatory upon the passenger to read them. They may be employed by the carrier as a means of bringing to the passenger's knowledge any reasonable regulation, but it does not follow from this that it is obligatory upon him to read all such notices, for if we were to hold that, we would have to hold that whether he read them or not, it being obligatory upon him to read them, he would be chargeable with the knowledge of their contents, and this is further than the law has ever gone. All, therefore, that the judge could be understood as saying was that the passenger was not obliged to read them in the sense of being answerable for a knowledge of what they contained, where he had the opportunity to read and neglected or omitted to do so, which was not, in my judgment, erroneous.

The other exception is to the observation of the judge that if the notice was brought home to the passenger, that it did not affect the contract of carriage, that it bore with some degree of importance upon the question of negligence and it was only in this respect that it was of any importance in the case. This, as an isolated proposition, might possibly mislead, but it could not do so in this case, for the jury were told in the commence-

ment of the charge that the case depended principally upon the question whether notice of the regulation had been given to the passenger, and after the observation excepted to had been made the judge stated to the jury in what respect the knowledge of the notice was of importance, that is, that it was for the jury to say whether the passenger, if he knew the regulation, was not guilty of negligence in allowing his things to remain in the state-room. But that was not all. He told them further that if the notice was put up in the state-room it might or might not be negligence on his part not to read it, and he left it for them to say, if it was posted up, whether he was guilty of negligence in not reading it, adding the observation that if he was guilty of negligence in not reading it, he could not recover, as he must be free from contributory negligence; so that the previous observation in connection with what followed it, amounted to about this, that the contract for carriage was made by the payment of the fare and by the delivery of the key of the state-room to the passenger, but if the jury thought that he was guilty of negligence if he knew of the regulation and did not conform to it, or if he did not read the notices if one was put up in the state-room, that he could not recover, which was putting the case even stronger for the defendants than I think they were entitled to. The carrier's liability for the loss of baggage arises from the obligation and duty which is imposed upon him by law from the public nature of his calling and is not necessarily founded upon the contract, for an action for the loss of baggage may be brought by a servant, though the contract for his passage may have been made with the master who engages for it and pays the fare: *Marshall* v. *York, &c., Railw.*, 11 C. B., 655; *Grant* v. *Newton*, 1 E. D. Smith, 95; *Hall* v. *Cheney*, 36 N. Hamp., 26.

In conclusion I will add that if it were necessary, I should feel disposed to hold that even if the passenger knew of this regulation it would be no infraction of it for him to take the valise, in view of what it contained, into the state-room with him. As I have said, it contained little else than a change of apparel, two shirts, two drawers, two pantaloons, &c., and the ordinary articles that a man uses to make his toilet. The

defendants' witnesses testified that it was customary under this regulation for the passengers to take light baggage or, as the witness expressed it, hand satchels with them into the state-room cabin.

When a passenger pays in addition for a separate or private room, or, as it is called, a state-room, in the boats, he does so to get greater and better accommodation, and for the privacy and security which it affords. If he has simply with him a valise, a small portable article coming under the denomination of light baggage, as it may be carried in the hand, and from its limited size usually admits of little else than the clothing and toilet articles required for present use, he has the right where such is the general character of its contents, to take it with him into the chamber provided for him and where he is to pass the night, and having placed it there and locked the door, the obligation is upon the carrier to see that his property is not purloined or stolen. Any regulation, the effect of which would be to prevent him from doing this, would be unreasonable. It is essential to the traveller's convenience and comfort, and the law would not descend into the particularity of insisting that he should open the valise, and taking out of it exactly what was requisite for the night, lock it up and then take it and deposit it in the baggage-room for safe keeping.

It might put him to considerable inconvenience if he had to do this, and in this case the passenger had scarcely time to do it, for he put the valise in the state-room and left for five minutes to bid his sister good bye, and when he returned it was gone. In fact it disappeared so quickly as scarcely to afford him time even to see or read the rules and regulations alleged to have been posted up, with which he was required to conform.

Judgment affirmed.